# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1948

# No. 10

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ALEXANDESUS BELLASKUS, PETITIONER,

*vs.*

L. D. CROSSMAN, OFFICER IN CHARGE, UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. a] [Caption omitted]

[fol. 1]

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION**

Ex Parte Alexandesus Bellaskus

Civil Action No. 2189

Appellant's Designation of Contents of Record on Appeal—Filed September 12, 1946

Appellant, Alexandesus Bellaskus, designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal in this action:

1. Application for Writs of Habeas Corpus with Court's Show Cause Order Attached.
2. Respondent's return.
3. The complete transcript of the evidence, two copies of which are filed herewith.
4. Final Judgment.
5. Notice of Appeal.
6. This designation.

Charles H. Sherman, Jr., of Counsel for Appellant, Alexandesus Bellaskus, 2201 Second Nat'l Bank Bldg., Houston 2, Texas.

[fol. 2] Certificate of Service

I, Charles H. Sherman, Jr., do hereby certify that a true copy of the foregoing designation has been served upon Respondent by personally delivering same to the offices of Brian S. Odem, United States Attorney for the Southern District of Texas, Houston, Texas, Attorney for L. D. Crossman, Officer in Charge of the United States Immigration and Naturalization Service, Respondent.

Charles H. Sherman, Jr., of Counsel for Appellant.

IN UNITED STATES DISTRICT COURT

APPELLEE'S DESIGNATION OF RECORD ON APPEAL—Filed September 17, 1946

To the Clerk of the District Court of the United States for the Southern District of Texas, Houston Division:

Appellee hereby designates the following matters to be included in and added to the record on appeal in this cause:

1. All docket entries.

2. Warrant for deportation of Alien No. 55897/31 dated October 25, 1935, attached to Respondent's return and denominated Exhibit "A".

3. Findings of Fact, Conclusions of Law and Opinion of Honorable T. M. Kennerly, United States District Judge in and for the Southern District of Texas, dated Decem-
[fol. 3] ber 4, 1939, in Civil Action Number 223, Houston Division, Ex Parte Alexandrus Bellasakus (Alex Bell), and Order thereon dated December 5, 1939, by Honorable T. M. Kennerly, United States District Judge, which Finding of Fact, Conclusions of Law and Opinion thereon, and Order upon said Opinion were attached to Respondent's return as Exhibit "B".

4. This Designation of additional portions of the record on appeal showing the date of service of a copy hereof upon counsel for Appellant.

It is requested that the record on appeal be prepared as required by law and the rules of this Court, the rules of the United States Circuit Court of Appeals for the Fifth Circuit, and the Rules of Civil Procedure for District Courts of the United States, and that it be filed in the proper office of the Clerk of said Circuit Court of Appeals for the Fifth Circuit.

Brian S. Odem, United States Attorney, by Joseph W. Cash, Assistant United States Attorney, Attorneys for Respondent-Appellee.

This is to certify that a copy of the foregoing Designation by Appellee of Additional Portions of Record on Appeal was served upon Honorable Charles H. Sherman, Jr., 2201 Second National Bank Building, Houston (2), Texas,

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and Honorable Charles F. Tucker, Sterling Building, Houston, Texas, Attorneys of Record for Appellant herein, by depositing a full, true and correct copy of said Designation by Appellee of Additional Portions of Record on Appeal [fol. 4] in the United States Mails, postage prepaid, on the 17th day of September, 1946, addressed to the said Honorable Charles H. Sherman, Jr., and the said Honorable Charles F. Tucker at their last known address designated above.

Joseph W. Cash, Assistant United States Attorney.

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[Caption omitted]

In the District Court of the United States for the Southern District of Texas, Holding Sessions at Houston

Civil Action No. 2189

Ex Parte Alexandrus Bellasakus, Alias Alex Bell

Docket Entries

May 20, 1946. Petition for Writ of Habeas Corpus filed in Duplicate.

May 20, 1946. Order to Show Cause filed.

[fol. 5] May 20, 1946. Writ to Serve Copy with Certified copy of above Show Cause Order issued for service on L. D. Crossman, Inspector of Immigration and Naturalization Service issued and delivered to Marshal.

May 21, 1946. Motion to Dismiss and Answer of L. D. Crossman filed in Duplicate.

May 21, 1946. Order Dismissing Writ of Habeas Corpus and Remanding Petitioner to Custody of Immigration Officials filed and entered.

May 24, 1946. Reporters Transcript of Proceedings filed.

May 24, 1946. Writ to Serve copy returned and filed (executed 5/21/46 by delivering to L. D. Crossman, Inspector Immigration and Naturalization Service).

June 4, 1946. Reporter's Stenographic Note Book No. 15 (McAtee) filed.

Aug. 19, 1946. Notice of Appeal filed.

Aug. 19, 1946. Copy of Notice of Appeal mailed to U. S. Attorney.

Aug. 19, 1946. Bond on Appeal ($250.00) Fidelity & Deposit Company of Maryland, Surety, filed and recorded.

Sept. 12, 1946. Appellant's Transcript of Proceedings filed in duplicate.

Sept. 17, 1946. Appellees Designation of Contents of Record filed.

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[fol. 6] IN UNITED STATES DISTRICT COURT

APPLICATION OF WRIT OF HABEAS CORPUS—Filed May 20, 1946

To the Honorable Judge of Said Court:

Comes now Alexandrus Bellasakus, alias Alex Bell, Petitioner in the above entitled and numbered cause, and files this his Petition for a Writ of Habeas Corpus, complaining of the Honorable L. D. Crossman, Inspector in Charge, Immigration and Naturalization Service, United States Department of Justice, Federal Building, Houston, Texas, and the Commissioner of Immigration and Naturalization, United States Department of Justice, Franklin Trust Building, Philadelphia, Pa., hereinafter called respondents, and would respectfully show unto this Honorable Court:

1. That your Petitioner was taken into custody by respondents at 11:30 A. M. on the 20th day of May, 1946, and has been informed that he will be placed on a train and removed from Houston, Texas, to New York City, New York, for deportation to Greece; that he in actual custody of said respondents, and that said respondents will remove petitioner from the jurisdiction of this Court unless restrained from so doing by the writ of this Honorable Court;

2. That such restraint and confinement are unlawful and are contrary to the Constitution and Laws of the United States of America.

[fol. 7] 3. That the only authority for his deportation from the United States, is a warrant of Deportation dated October 25, 1935, wherein Petitioner is ordered deported to Greece;

4. That Petitioner was not accorded a fair hearing by the Immigration and Naturalization Service, and that the said Warrant of Deportation is void, ab initio;

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5. That there is no evidence to sustain said Warrant of Deportation, and that the same is void and has no force and effect at this time;

6. That the issuance of said Warrant of Deportation constitutes an abuse of discretion, and that such action is arbitrary and capricious, and the Immigration Officers have applied erroneous construction of Law;

7. That the said Warrant of Deportation, dated October 25, 1935, has no force and effect at this time, and is void for the reason that it has expired by operation of law;

8. That the Immigration Inspector conducted a hearing in this case and made a finding of fact that your petitioner was born in Turkey; immigrated to the United States from Turkey, and was a citizen and subject of Turkey, and that there is, therefore, no authority under the law for his removal from the United States to Greece, as he is not a citizen of such country, has no relatives or business interest there, and has never heretofore been to Greece.

Wherefore, premises considered, your petitioner prays that this Honorable Court grant and issue a Writ of Habeas Corpus forthwith, demanding Honorable L. D. Crossman, one of the respondents herein, or any other [fol. 8] officer having custody of said petitioner, to produce him in person before your Honorable Court and to show cause, if any he has, why he should not be restrained and enjoined from removing said petitioner from the jurisdiction of this Court, and restrained from deporting petitioner from the United States to Greece, and to show cause why said petitioner should not be released from said unlawful restraint and confinement, and that pending final decision petitioner be released upon Appearance Bond in a reasonable sum, to guarantee his appearance Instanter, and that respondents produce before this Honorable Court a certified and proper authenticated record of the proceedings before the Immigration and Naturalization Service in this case.

Alex Bell, Petitioner. Charles H. Sherman, Jr., C. F. Tucker, Attorneys for Petitioner.

*Duly sworn to by Alex Bell. Jurat omitted in printing.*

[fol. 9] IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE—Filed May 20, 1946

Upon the petitioner making necessary arrangements with respect to the costs of Court, the Clerk of the Court will file this petition for Writ of Habeas Corpus, and hearing of said matter is set for the 21st day of May, 1946, at 10 o'clock a. m., in the District Court of the United States of America, for the Southern District of Texas, at Houston, Texas, at which time Respondent, Honorable L. D. Crossman, is required to produce the Petitioner, Alexandrus Bellasakus, alias Alex Bell, and also a properly authenticated record of the proceedings in this case before the Immigration and Naturalization Service, and to show cause, if any he can, why the Writ of Habeas Corpus should not issue.

The Clerk of the Court will issue, and the Marshal will serve all necessary processes.

Done this 20th day of May, 1946.

(S.) Allen B. Hannay, Judge of the United States District Court, for the Southern District of Texas, at Houston, Texas.

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[fol. 10] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS AND ANSWER OF RESPONDENT, L. D. CROSSMAN—Filed May 21, 1946

Now comes L. D. Crossman, Officer in Charge, Immigration and Naturalization Service, and moves the Court to dismiss the petition filed herein for the following reasons:

I

That said application does not allege facts sufficient upon which to base action of this Court, but constitutes solely conclusions of the Petitioner.

Wherefore, respondent prays that petitioner for writ of habeas corpus be dismissed.

L. D. Crossman, Officer in Charge, Immigration and Naturalization Service, Houston, Texas.

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Respondent, without waiving the foregoing motion to dismiss, makes further answer and says that he is holding the petitioner under a warrant of deportation issued by the Assistant to the Secretary of Labor on October 25, 1935, a copy of which is attached hereto and marked Exhibit "A", and made a part hereof.

That said warrant of deportation was issued following a full and fair hearing, held in accordance with law, and in accordance with the regulations of the Secretary of Labor, [fol. 11] before an authorized Immigrant Inspector, and at which hearing petitioner was represented by counsel, to-wit: the Honorable Julian A. Weslow, an attorney at law, of Houston, Texas, and was offered the opportunity to cross-examine any and all of the witnesses produced at said hearing; that at the conclusion of such hearing said officer found that petitioner is subject to deportation, under Section 19 of the Immigration Act of February 5, 1917, in that, said petitioner has been found managing a music and dance hall, and resort, habitually frequented by prostitutes and where prostitutes gather.

Upon full and due consideration of the facts adduced upon said hearing, the Assistant to the Secretary of Labor issued the warrant of deportation aforesaid.

Respondent further alleges, that on December 5, 1939, Honorable T. M. Kennerly, District Judge, entered his order dismissing application for writ of habeas corpus filed herein by *respondent* on December 2, 1939, in Civil Action 223, Houston Division, Southern District of Texas, remanding petitioner to the Immigration and Naturalization Service at Houston, Texas, for deportation in accordance with the warrant of deportation referred to, a copy of said order being attached hereto and marked Exhibit "B", and the opinion of the Court being referred to and made a part hereof.

Wherefore, respondent prays that he be discharged from the Court's order, and that petitioner be remanded to his custody, that the warrant of deportation aforesaid may be executed.

L. D. Crossman, Officer in Charge, Immigration and Naturalization Service, Houston, Texas, Respondent.

[fol. 12] EXHIBIT "A"

Warrant—Deportation of Alien

2923-7463

United States of America, Department of Labor,
Washington

No. 55897/31

To District Director of Immigration and Naturalization, Galveston, Texas, or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, from proofs submitted to me, Assistant to the Secretary, after due hearing before an authorized immigrant inspector, I have become satisfied that the alien Alexandrus Bellasakus, alias Alex Bell, who entered the United States at New York, N. Y., ex SS. "Alice" on the 15th day of Nov. 1909, is subject to deportation, under Section 19 of the immigration Act of February 5, 1917, being subject thereto under the following provisions of the laws of the United States, to wit: The Act of 1917, in that he has been found managing a music and dance hall and other place of amusement and resort, habitually frequented by prostitutes and where prostitutes gather.

I, Turner W. Battle, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me, by and under the laws of the United States, do hereby command you to deport the said alien to Greece, at the expense of the appropriation "Salaries and Expenses, Immigration and Naturalization Service 1936", including the expenses of an attendant, if necessary. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding appearance bond.

[fol. 13] For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 25th day of October, 1935.

(S.) Turner W. Battle, Assistant to the Secretary of Labor.

A True Copy I certify. Attest:

L. D. Crossman, Inspector in Charge.

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EXHIBIT "B"

Office File 35651

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 223

Ex Parte: ALEXANDRUS BELLASAKUS alias Alex Bell

The Petition and Writ of Habeas Corpus obtained on behalf of Alexandrus Bellasakus, alias Alex Bell, on the twenty-ninth day of November, A. D. 1939, having come on to be heard before this Court, on the fourth day of December, A. D. 1939; and after hearing John F. Shea, Attorney for the petitioner, in support of the writ and Miles L. Moss, Assistant United States Attorney, in opposition thereto, upon the petition for the writ of habeas corpus and respondent's report thereto, and the evidence introduced at the hearing of this cause;

[fol. 14] It is Ordered that the said Writ of habeas corpus, be and the same is hereby, dismissed, and the petitioner is remanded to the custody of L. D. Crossman, Inspector in Charge, United States Immigration and Naturalization Service, at Houston, Texas, for deportation, in accordance with the provisions of the warrant of deportation held by said Immigrant Inspector.

Done at Houston, Texas, this 5 day of December, A. D. 1939.

T. M. Kennerly, United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

C. A. 223

Ex Parte: ALEXANDRUS BELLASAKUS (Alex Bell)

John F. Shea, of Houston, Texas, for Petitioner.

Douglas W. McGregor, U. S. District Attorney, and Miles L. Moss, Assistant U. S. District Attorney of Houston, Texas, for United States of America.

December 4, 1939

Memorandum:

A Warrant of Deportation having been issued by the Secretary of Labor October 25, 1935, for the deportation of Alexandrus Bellasakus, alias Alex Bell (for brevity called Petitioner) charging that:

[fol. 15] "he has been found managing a music and dance hall and other place of amusements and resort, habitually frequented by prostitutes and where prostitutes gather"

he petitions for the Writ of Habeas Corpus.

The place is the Atlantic Cafe and Night Club, located on the corner of Congress and Chartress Streets in the City of Houston, Texas. In one room, there was a dance hall and place for the sale of beer, and in the other and adjoining room, a cafe or restaurant. There was a large double door between the rooms. That the place was a resort habitually frequented by prostitutes and where prostitutes gather is perfectly clear from the record. That Petitioner was there every day both in the dance hall and in the restaurant, aiding in carrying on the business is likewise clear.

1. Petitioner claims that the record and the evidence which Petitioner brought before the Court, show he owned no interest in the dance hall, but only owned the restaurant or an interest in the restaurant. This was one of the issues before the Immigration Authorities. Petitioner's early statements do not support this view. His later statements—and his statements at this trial do support this view.

An issue of fact was presented which has been decided adversely to Petitioner by the Immigration Authorities and which this Court may not review.

2. Petitioner also claims that he did not have a fair trial before the Immigration Authorities. A careful examination of the record discloses that this is not true. [fol. 16] He was represented by counsel, had a full hearing, and a careful examination of the record discloses that all his rights were carefully preserved.

3. Petitioner also claims that the evidence is not sufficient to support the Warrant of Deportation, and that he,

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under the Law, cannot be deported upon the facts found by the Immigration Authorities. This view cannot be supported.

See Lindsey v. Dobra, 62 Fed. (2d) 116.

From what has been said, it follows that the Writ of Habeas Corpus should be denied, and Petitioner remanded to the custody of the Immigration Authorities.

Let an Order be drawn and presented accordingly.

(S.) T. M. Kennerly, Judge.

* * * * * * *

[fol. 17] In the District Court of the United States for the Southern District of Texas, Houston Division

Civil Action No. 2189

Ex Parte Alexandesus Bellaskus

**Transcript of Evidence and Proceedings**—Filed September 12, 1946

Appearances:

For the Petitioner: Charles F. Tucker, Esq., Charles H. Sherman, Esq.

For the Respondent: Joseph C. Cash, Esq.

Proceedings

The Court: All right, gentlemen. What is the status of this habeas corpus? Are both sides ready?

Mr. Cash: If the Court please, I saw a copy of the petition, or the order to show cause, I mean, only this morning, and I immediately dictated a return to it. Our office staff, however, is a little short right now, and it is not ready, but it will be in about thirty minutes. Otherwise, the Government is ready, and wishes to go forward at this time. That is, if we may have a continuance for about thirty minutes in order to get the pleadings in.

The Court: Do you want to see the pleadings before you go forward?

[fol. 18] Mr. Cash: I have seen the application, Your Honor, but have not yet filed the return.

The Court: I mean do they want to see your pleadings before they proceed?

Mr. Tucker: Yes, Your Honor.

Now, Your Honor, the Court in its fiat, ordered the production of the record of the proceedings that have been had, Your Honor, before the Immigration and Naturalization Service, and Mr. Sherman and I have alleged in our petition that the hearing was unfair, that there was no evidence to sustain the warrant of deportation, and we believe, Your Honor, that the record should be before this Court.

The Court: Where are the records, Mr. Cash?

Mr. Cash: If the Court please, I saw that the Court had ordered this certified copy to be before the Court, and that is customary, but I would be willing to go forward without bringing it down here, and I don't think the Court needs it, for the simple reason that this entire record has been heretofore before Judge Kennerly, and he gave this man a full, fair and complete hearing, and at that time issued an order remanding this man back to the custody of the Immigration and Naturalization Service for deportation in 1939.

The Court: When was that hearing held?

[fol. 19] Mr. Cash: On December 3rd, 1939, Civil Action 223, Houston Division. I have the file coming in now. I didn't mean to go into that until we got into the case, but this whole proceeding is res judicata, if the Court please, and has already been passed on by Judge Kennerly. I didn't intend to bring that up at this time, but——

The Court: If that is the case, we can stay the proceedings until Judge Kennerly returns. Mr. Clerk, do you know where Judge Kennerly can be reached? I am not familiar with his schedule. Is he to be in Galveston next week?

The Clerk: No, sir, he is enroute to New Orleans.

The Court: I mean next week.

The Clerk: Oh, June 3rd he will be in Galveston. He is here next week.

The Court: Well, since he has already passed on this matter,—that is the first information I had on that——

Mr. Cash: Of course it is a closed case, Your Honor.

The Court: I am wondering if we could not make some arrangement—where is the petitioner? Which one is he?

[fol. 20] Mr. Tucker: Right here, Your Honor, Alexander Bell.

The Court: Is that him?

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Mr. Tucker: Yes, sir.

The Court: I was wondering if we could make some arrangement whereby it could be tried before Judge Kennerly, or hold off at least until I have a chance to see whether that is what he wants. I wouldn't want to take it away from him.

Mr. Cash: Well, it is a final decision, Your Honor.

The Court: I wouldn't have in mind what was in his mind. It would be impossible for us to ascertain what was in his mind without having him testify. I think it would be a lot better to have him try the law suit.

Mr. Cash: Well, as I see it, Your Honor,—of course, if that is what the Court wishes to do, that will be the ruling, but as I see it, the original habeas corpus hearing was had, and he heard evidence, and wrote an opinion on it which is a part of the record of this Court, and it is a final opinion.

The Court: Were you familiar with that, Mr. Sherman?

[fol. 21] Mr. Sherman: Only to the extent, Your Honor, that I understood that a hearing was had. However, my understanding is that it was not a full, final and complete hearing.

The Court: Have you read the opinion?

Mr. Sherman: No, sir, I have not read it.

Mr. Cash: The opinion itself is about two pages long, Your Honor, and goes very fully into the facts, and shows that the hearing was fair, and Judge Kennerly had everything before him, and the reason I am insisting, in a way, if it may be called that, that it be heard here at this time, or passed on at this time, is the fact that we have these deportation trains for parties going over the country, as Your Honor knows——

The Court: Don't they take them pretty often now? How often do they come?

Immigration Agent L. D. Crossman: At the present time they are irregular. Before the war, they used to be one about every six weeks, but the last one we had was in January, and that is about five months ago, but since shipping is becoming available again, I imagine they will run more often.

The Court: Well, how long—this man was ordered deported in 1939, and he has not been deported yet. Why was that?

[fol. 22] Mr. Tucker: '35, Your Honor.

The Court: '35?

Mr. Tucker: Yes, Your Honor.

The Court: Let the man answer the question. I asked him.

Mr. Tucker: I beg your pardon.

Immigration Agent Crossman: The reason for that delay was that in 1939, when he was returned to our custody, we were unable to get a passport to Greece, but now they can be deported without passports to Greece, and it was held up for that sole reason, Your Honor.

The Court: Eleven years?

Immigration Agent Crossman: The passport facilities were not such as he could be deported at that time.

The Court: It has been held up for eleven years?

Immigration Agent Crossman: Yes, sir.

[fol. 23] The Court: Has he been out on bond, or what has been his status?

Immigration Agent Crossman: He has been out on bond, and has been taken into custody two or three times ready for deportation, and one time we had the habeas corpus, another time he got a postponement by the central office, and the last time, which was in last January, another stay was made to give him an opportunity to have the case presented, for the purpose of considering a motion for reopening.

The Court: What happened to that?

Immigration Agent Crossman: It was denied, and we received notice on it last week.

The Court: The petition to reopen was denied?

Immigration Agent Crossman: Yes, sir.

Mr. Cash: If the Court please, we can get that copy of Judge Kennerly's opinion and the entire clerk's file, and the opinion is only about two pages long.

The Court: Well, you get this other in, and I will come back on the bench about 11:00 and see what the situation is. I have another matter at 10:30 that should not take over thirty minutes, in my office, so I will recess again until 11:00 o'clock.

[fol. 24] (Recess at 10:15 a. m. until 11:00 o'clock a. m., May 21st, 1946, at which time the following proceedings took place herein.)

The Court: Have you filed your answer?

Mr. Cash: Yes, I have, Your Honor.

The Court: All right.

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Mr. Cash: If the Court please, I made reference as an exhibit in the pleading there to the copy of the opinion of Judge Kennerly, but I didn't have it copied, I didn't have time to have it copied, so, if the Court please, I will present it to the Court as a part of the exhibit, or as an exhibit to the pleading, just as though it were attached to the return itself.

The Court: Very well.

I have read the things that are before me. What is your answer to that, Mr. Sherman and Mr. Tucker? Have you read these matters?

Mr. Tucker: Your Honor, it is our position that we have raised at least two new issues in this proceeding that were not before Judge Kennerly on the previous petition or writ of habeas corpus in 1939 and they are, Your Honor, we allege in our petition that the issuance of this warrant of deportation constitutes an abuse of discretion, and that such action upon the part of the defendant Secretary of [fol. 25] Labor, who issued this warrant in 1935, was arbitrary and capricious, and that the immigration officers had applied an erroneous construction of the law in this case. We take the position also in paragraph 7 of our petition, Your Honor, that the warrant of deportation, dated October 25th, 1935, has expired by operation of law, it being eleven years old, and we take the position——

The Court: Well, what is the law on that, or is there any limitation as to the time?

Mr. Tucker: Your Honor, there are some cases that we would like to present later on that question.

The Court: That is the only point that gives me any pause at all, because I am not going to overrule Judge Kennerly. I don't have that authority, in the first place.

Mr. Tucker: Your Honor, may I state our third additional ground that we have raised?

The Court: I thought you said you had two, but go ahead.

Mr. Tucker: The other ground we raised is that the immigration inspector who conducted a hearing in this case in 1935 made a finding of fact that the petitioner in this case was born in Turkey; that he immigrated to the United States from Turkey, and that he was a citizen and subject of Turkey, and therefore we take the position that there is no authority under the law for his removal to Greece, which [fol. 26] is the country named in the warrant of deportation. We will endeavor to show, Your Honor, that the petitioner

has never been in Greece; that all of his relatives are in Turkey, and he has been in this country since 1909, and we expect to endeavor to show the Court that the petitioner was transferred, after His Honor, Judge Kennerly, ruled in the previous writ of habeas corpus case that he had a fair hearing, and there was sufficient evidence, that they transported him to New Orleans, and took him before the Greek Consul in that city, and asked him to take an oath of allegiance to Greece, so he would become a citizen of such country, and that he declined to do so.

Those, Your Honor, are the additional grounds that we have raised, which we respectfully submit to the Court were not before the Court in the previous petition.

The Court: Well, it is my opinion that the only thing I can or should go into is the question of the invalidity of the deportation warrant by reason of the passage of time. In other words, eleven years, or whatever it is. That is the only feature that I would hear you on at all.

Mr. Sherman: If the Court please, I would like to say one further word. We have alleged that the commissioner applied an erroneous construction of law, and I believe that it shows it on its face, in view of a case that we have here.

The Court: You mean that is previous to Judge Kennerly's hearing in '39?

Mr. Sherman: This case was previous to that time.

[fol. 27] The Court: I am talking about——

Mr. Sherman: This issue was not raised before.

The Court: That doesn't make any difference. It should have been raised, and they had counsel both at the hearing —both at the hearing before Judge Kennerly and at the hearing before the commissioner.

Mr. Sherman: I think it should have been raised too, Your Honor, but it is our contention that if it — so fundamental that the order is void, that it can be raised at any time.

The Court: I am not going to overrule another District Judge, because of the fact that the books are full of decisions you can't do that, and I am not going to try to.

Mr. Tucker: Your Honor, there is one other thing I would like to respectfully invite the Court's attention to, and we wish to ask that this be done to preserve the record if an appeal should be taken in this case.

The Court: Go ahead.

Mr. Tucker: Your Honor ordered—that is, we prayed

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for in our petition that a duly authenticated certified copy of the record of the proceedings had before the Immigration and Naturalization Service in 1935, we asked the Court to [fol. 28] require the production of that record here in Court, and the Court so ordered——

The Court: If you had told me the full facts, or if your petition had disclosed the full facts, I would not have made that order.

Mr. Tucker: Well, Your Honor——

The Court: In view of Judge Kennerly's holding that this proceeding was fair, I would not have gone into that at all, in view of his opinion on that point. I am foreclosed from doing that.

Mr. Tucker: Your Honor, the order of Your Honor does require the production of that record here——

STATEMENT BY THE COURT

The Court: That order was made on the assumption that you had told me all of the material facts in your petition, and you left that out. I would not have made it if I had had that information before me, that Judge Kennerly had already passed on this question and had held that the petitioner had had a fair trial, or hearing.

"The petitioner also claims he did not have a fair trial before the Immigration Authorities. A careful examination of the record"—which is the record you are asking for—"discloses that this is not true. He was represented by counsel, had a full hearing, and a careful examination of the record"—that is a careful examination of the record by Judge Kennerly—"discloses that all of his rights were carefully preserved.

[fol. 29] "Petitioner also claims that the evidence is not sufficient to support the warrant of deportation, and that he, under the law, cannot be deported upon the facts found by the Immigration Authorities. This view cannot be supported. From what has been said, it follows that the writ of habeas corpus should be denied and the petitioner remanded to the custody of the Immigration Authorities. Let an order be drawn and presented accordingly."

COLLOQUY

Mr. Tucker: Your Honor, at this time I make a motion that the Immigration Service be required to produce the

record, the duly certified and authenticated record of the central office of the Immigration and Naturalization Service at Philadelphia, as they have been ordered to do by the Court.

The Court: For the reason that Judge Kennerly has already passed on that question or that feature of this case, I refuse.

Mr. Tucker: I accept, Your Honor, respectfully.

The Court: All right. Now I will hear from you on the question of time.

Mr. Cash: I believe that is the only question in the case, Your Honor, and in the short time allot-ed to me I have found some cases where this same question has been brought up, and, as Your Honor knows, where aliens are concerned, the Department of Labor, which was the predecessor department to the department having control over aliens in this country, deportation and admissions, before it came under [fol. 30] the control of the Department of Justice, they had extensive regulations regarding the handling of aliens prior to deportation, and it is not unusual to find that many of these aliens, after having exhausted the administrative remedies, and having secured one delay after another, finally resort to the Courts for habeas corpus, and I have two cases here where several years elapsed, and another where there was eleven years which elapsed between the issuance of the warrant and the hearing on the application for a writ of habeas corpus, and the Courts have held that time has no relation whatever to the execution of the warrant; that the facts to be considered are the facts behind the issuance of a warrant, and just because a man can stave off by his own efforts, or the incidents of a war, or something of that sort, that does not affect the right of the Attorney General to get him back to the country where he is supposed to go.

I would like to read one excerpt from one case, Your Honor——

The Court: Go ahead.

Mr. Cash: In the case of Seif versus Nagle, 14 Federal 2nd 416, the Court stated as follows:

"It is urged that the Secretary of Labor and Commissioner of Immigration have waived the right to deport in that they have waited an unreasonable time after the Department of Labor assumed jurisdiction of the detained.

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We find no merit in the point. When the original order of 1914 was made directing deportation to Austria, because of the war the alien could not have been deported to that country. Since the war, even as late as 1924, the alien himself has exerted efforts to prevent deportation and has been [fol. 31] successful in obtaining several stays. But in August, 1925, the Government of Poland issued the necessary passport. No sufficient reason appears for issuing judicial process that will prevent carrying out the order of deportation."

Now, there is a recent District Court case in California, where Judge St. Sure, of course, handles many of those immigration cases one the West Coast. He says—well, I will just read on the head notes for the gist of the holding:

"Where, at time of issuance of original deportation warrant it was impossible to deport Russian alien, who was then at liberty for several years before being re-arrested under original warrant for purposes of deportation because of continuation of activities in the Communist party, the Attorney General was allowed broad discretion in finding ways and means of executing the original deportation warrant."

The Court says:

"Attention is called to the fact that petitioner has been available for deportation for a period in excess of ten years. It is urged that the old warrant has become functus officio because it was not executed within a reasonable time. Until recently taken into custody petitioner was not restrained of his liberty."

The Court then quotes, " 'Surely there is nothing in this case showing that the delay in deporting the petitioner work a disadvantage to him. If anything, he profited by it.' During a part of the time diplomatic relations did not exist between the United States and the Soviet Republics and deportation of aliens was therefore impossible. [fol. 32] The Attorney General now represents that he has 'reason to believe that deportation of petitioner can be effected.' The return further shows 'that petitioner has, subsequent to the 5th day of December, 1930, persisted in a flagrant manner in * * * membership * * * activities and is a high official in * * * the Communist Party in the United States of America.' "

And then it goes on to a question of certain evidence. Your Honor, there is no statute of limitation on deporting an undersirable alien. This matter has been before Judge Kennerly several times. It was before him in the Beaumont case, that was transfererd here for trial, and in some other cases as well, but I have not had time to go into it very fully. However, these cases are representative of the fact that you look to what happened behind the warrant of deportation. If the proceedings were fair and issued upon some testimony, the fact that an alien will come in and give testimony possibly different from what he did is not important, because Congress has given the Attorney General the final say in matters of fact, and this Court passes on the fairness of it, which this Court has done, through Judge Kennerly, and I ask, in the state of the record, I ask that this man be remanded to the Immigration and Naturalization Service in accordance with the original warrant issued in 1935.

Mr. Sherman: If Your Honor please, before Mr. Tucker makes his argument for the sake of the record, do I understand that you overrule our attempt to introduce evidence as to Item Number 6 in our petition, and Item Number 8?

The Court: 6 and 8?

[fol. 33] Mr. Sherman: Yes, sir. That is where we have alleged that the Immigration officers applied an erroneous conclusion of law, which matter was not raised in the prior hearing, and Item 8 is that the petitioner was born in Turkey, and the order shows on its face that they are about to deport him to Greece.

Mr. Cash: May I say there, Your Honor, that both of those involve mere conclusions of law and not statements of fact, and it is a matter that could have been brought up in the previous trial if they were to be considered. As a matter of fact, both of them are inherent in the record, and they were in the file at the time Judge Kennerly rendered his ruling.

The Court: The only point I want to hear anything on is the law with reference to the passage of time, and as to it being a bar to the enforcement of the deportation.

Mr. Sherman: May we have our exception, Your Honor?

The Court: Yes, sir.

Mr. Tucker: Your Honor, I am really not prepared to present some of the decisions I had in mind on that subject that the Court has expressed an interest in, that is the expiration of this warrant. There is a decision by Judge

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Hann that I do not have available here, because I did not think I would be called upon to argue that point this morn-
[fol. 34] ing, and I would like time to look into that case further and present it to Your Honor in writing or brief form.

The decisions I have at hand, Your Honor, one case I think is very interesting upon this point, and that is the case of Saganaski versus Weeden. It was decided October 19th, 1931, by the Circuit Court of Appeals for the Ninth Circuit. The citation is 53 Federal 2nd 13. The Court held—I believe that decision was not in Seattle, Washington,—and the Court held that if for any reason order and deportation warrant cannot be carried into effect, alien must be discharged from custody.

I would much prefer to present that fully to Your Honor, because, as I say, I had not expected to be called upon to argue the law at this time. I thought we would go into the trial of this case on its merits. However, the Court said in that case, "Applicant contends"——

The Court: On that point, didn't you know this ruling of Judge Kennerly?

Mr. Tucker: Yes, Your Honor, I read the petition.

The Court: Have you read it?

Mr. Tucker: I read the petition of the previous attorney, the attorney on the previous hearing.

The Court: Did you read the opinion?

Mr. Tucker: No, Your Honor, I had not read the opinion
[fol. 35] in this case. I merely read the petition, and I noticed in the petition by the previous attorney that there was no allegation in the petition that there was not evidence to support the finding of the Secretary, and that there was no allegation in there as to the fact that they were endeavoring to deport the petitioner to Greece, instead of to Turkey. I knew fully of the petition, and I knew that that case had been decided about six years ago, and I knew also, Your Honor, that subsequent to Judge Kennerly's decision in this case,—and I can establish it,—that the Immigration Service ordered Bell to report to New Orleans to take the oath——

The Court: Well, let's get back to the law.

Mr. Tucker: Yes, Your Honor.

The Court: Don't testify. Let's get back to the law.

Mr. Tucker: I will, Your Honor. That is one case that we respectfully submit to the Court. It was stated in that case, that applicant contends it is the purpose of the Immigra-

tion officers to deport him to Russia via Shanghai, and it appears from the record that the suggestion was made that the applicant be deported from the Port of Seattle to Shanghai, with provisions for retail transportation from that port to Russian territory. The warrant itself provides that the alien be sent to Russia. The former course is not warranted by the facts or the law. To convey petitioner to Shanghai and there release or discharge him would in no sense satisfy the law nor carry into effect the order of deportation. This Court cannot sanction such a course, and [fol. 36] we would not assume it would be pursued. The Secretary of Labor has found, and we think correctly so, that the petitioner should be deported to Russia. If for any reason this order cannot be carried into effect, the petitioner should be discharged from custody."

The Court: Well, here, as I understand it, there isn't any question but that he can be deported to Greece, or Turkey, or whichever——

Mr. Cash: That is correct, Your Honor.

Mr. Tucker: We contend that it cannot be done legally, Your Honor, and we have some cases on that point, if the Court would care to hear them.

The Court: The only one I want to hear about is on the question of time.

Mr. Tucker: That is our one case, Your Honor, and here is a case of Browder versus Johnson, in the District Court of Maryland—no, Massachusetts. I beg your pardon. 5th Federal 2nd 238. "Alien ordered deported cannot be imprisoned indefinitely pending recognition of Soviet Government by United States, because of inability to deport."

The Court: That is a different situation, as I understand it here.

Mr. Tucker: Your Honor, that very issue is in this case, because the man was ordered deported in '35, and they have [fol. 37] actually let him remain here for eleven years to obtain the recognition of Greece, because they contend that this man is a citizen of Greece.

The Court: Wasn't the case you just read me—you, or whoever was representing him could have probably brought that up at a different time, but you can't bring it up now, when they have the place available and the means available.

Mr. Tucker: Your Honor, there is one other case that I wish to cite to the Court, and that is Ex parte Matthews,

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from the Western District of Washington, 277 Federal 875.

That case holds that where an alien has been ordered deported to a certain country, the Government does not have right to hold him indefinitely until some arrangement is made or worked out among the various countries for recognition which would entitle them to effectuate the warrant of deportation.

Then the other case is U. S. versus Ruiz, by the Circuit Court of Appeals of Louisiana, and it is a decision by Judge Foster, of April 22nd, 1911, 186 Federal 602——

The Court: 186——

Mr. Tucker: Yes sir, 186, Your Honor.

The Court: —102?

Mr. Tucker: Just a minute, Your Honor. It is 602, Your Honor.

[fol. 38] The Court: 602?

Mr. Tucker: That is right, Your Honor, 602.

Now, Your Honor, there is one other case I would like to have the privilege of presenting to the Court, by Chief Justice Hann, and I think it is the Circuit Court——

The Court: How long will it take to get it?

Mr. Tucker: I don't know. I think I can have it within thirty minutes. I know the case is in existence, but I just can't put my hand on it.

The Court: Well, go and get it. I will give you thirty minutes. I will give you thirty minutes to get it in. Be back by twelve.

Mr. Tucker: All right, Your Honor.

(After some delay.)

Mr. Tucker: Your Honor, I am going to waive the presentation of that case. I just don't know where it is, and I think I have presented probably all of the authorities that are available.

The Court: All right. I will deny the habeas corpus then. Write me an order on it, Mr. Cash.

[fol. 39] Mr. Cash: Yes, sir.

Mr. Tucker: Your Honor, we wish to respectfully note an exception to Your Honor's ruling, and give notice of appeal to the Circuit Court of Appeals for the Fifth Judicial Circuit.

The Court: All right. I will give you back your papers here.

Court will stand adjourned under the rule.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 2189

Ex Parte ALEXANDRUS BELLASAKUS, Alias Alex Bell

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AND REMANDING PETITIONER TO CUSTODY OF IMMIGRATION OFFICIALS—Filed May 21, 1946

On this 21st day of May, A. D. 1946, came on for hearing the petition of Alexandrus Bellasakus, alias Alex Bell, and Order of this Court issued May 20, 1946, requiring L. D. Crossman, Respondent, to produce the petitioner, Alexandrus Bellasakus, alias Alex Bell, and after hearing C. F. Tucker and Charles H. Sherman, Jr., attorneys for [fol. 40] petitioner, in support of the application, and Joseph W. Cash, Assistant United States Attorney, in opposition thereto, upon the petition for the writ of habeas corpus and respondent's return thereto, and the evidence introduced at the hearing of this cause:

It is Ordered that the said writ of habeas corpus be and the same is hereby dismissed, the rule to show cause is discharged, and the petitioner is remanded to the custody of L. D. Crossman, Officer in Charge, United States Immigration and Naturalization Service, at Houston, Texas, for deportation, in accordance with the provisions of the warrant of deportation held by the said L. D. Crossman.

(S.) Allen B. Hannay, United States District Judge.

Done at Houston, Texas, this 21st day of May, A. D. 1946.

JWC/cp.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed August 19, 1946

To the Honorable Judge of Said Court:

Notice is hereby given that Alexandesus Bellaskus, Petitioner in the above numbered and styled Action, hereby [fols. 41-42] Appeals to the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, from the final Judgment rendered and entered in this Action on the 21st day of May, A. D. 1946.

Bond for Costs in the sum of Two Hundred Fifty ($250.00) Dollars, conditioned and payable as required by Rule 73-c, is filed herewith.

Dated and filed on this 19th day of August, A. D. 1946.

C. F. Tucker, Attorney for Appellant, Alexandus Bellaskus.

313 Sterling Building, Houston 2, Texas, Fairfax 5641.

Bond on appeal for $250.00 approved and filed August 19, 1946, omitted in printing.

[fol. 43] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 44] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of November 5, 1947

No. 11786

ALEXANDESUS BELLASKUS

versus

L. D. CROSSMAN, Officer in Charge, United States Immigration and Naturalization Service

On this day this cause was called, and, after argument by Joseph W. Cash, Esq., Assistant United States Attorney, for appellee, was submitted to the Court.

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[fol. 45] OPINION OF THE COURT AND DISSENTING OPINION BY SIBLEY, CIRCUIT JUDGE—Filed December 2, 1947

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 11786

ALEXANDESUS BELLASKUS, Appellant,

versus

L. D. CROSSMAN, Officer in Charge, United States Immigration and Naturalization Service, Appellee

Appeal from the District Court of the United States for the Southern District of Texas

(December 2, 1947)

Before Sibley, Holmes, and McCord, Circuit Judges

HOLMES, Circuit Judge:

This appeal is from a judgment discharging a writ of habeas corpus, which was issued upon a second petition by appellant, who is now in custody under an order of deporta-

tion to Greece, issued under Section 19 of the Immigration Act of 1917.[1]

[fol. 46] It is admitted that the petitioner is an alien and that he entered the United States in 1909. The warrant for petitioner's deportation was issued, in 1935, after he had been found managing a dance and music hall and other places of amusement and resort habitually frequented by prostitutes. Subsequently, he was taken into custody, but until late in 1939 he was able to secure several delays. Meantime, World War II had commenced in Europe, and the petitioner was still in the United States. After being taken into custody for deportation in 1939, he began habeas corpus proceedings in the court below.[2] After a hearing, wherein counsel appeared with the petitioner, evidence was heard, and the full official Central Office Immigration Record was examined, the court below held that the petitioner had committed the acts as found by the immigration officials and that, as shown by their records, they had carefully preserved all of his rights.[3]

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[1] 39 Stat. 874, c. 29.

[2] The proceedings were had before different judges.

[3] Memorandum of December 4, 1939, by Kennerly, District Judge.

"A Warrant of Deportation having been issued by the Secretary of Labor October 25, 1935, for the deportation of Alexandesus Bellaskus, alias Alex Bell (for brevity called Petitioner) charging that: 'he has been found managing a music and dance hall and other place of amusements and resort, habitually frequented by prostitutes and where prostitutes gather' he petitions for the Writ of Habeas Corpus.

"The place is the Atlantic Cafe and Night Club, located on the corner of Congress and Chartress Streets in the City of Houston, Texas. In one room, there was a dance hall and place for the sale of beer, and in the other and adjoining room, a cafe or restaurant. There was a large double door between the rooms. That the place was a resort habitually frequented by prostitutes and where prostitutes gather is perfectly clear from the record. That Petitioner was there every day both in the dance hall and in the restaurant, aiding in carrying on the business is likewise clear.

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The Immigration Service was unable to obtain a passport to Greece in 1939, and no effort was made to deport the petitioner to Greece during the years of occupation of that [fol. 47] country by the Nazis. In early 1946, the immigration officials took the petitioner into custody for deportation, but their Central Office granted a stay for the purpose of consideration of a motion to reopen the case. Upon the denial of the motion and denial of a further stay, deportation was ordered. At this stage of the case, the present petition was filed, an order to show cause being entered. This order included a requirement that the record of the proceedings before the Immigration and Naturalization Service be produced, but it was not possible for such records to be produced on one day's notice, and they were not produced at the hearing. The Government's return to the show-cause order was a motion to dismiss the petition and an answer which set forth the regularity of the warrant and the lower

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"1. Petitioner claims that the record and the evidence which Petitioner brought before the Court, show he owned no interest in the dance hall, but only owned the restaurant or an interest in the restaurant. This was one of the issues before the Immigration Authorities. Petitioner's early statements do not support this view. His later statements—and his statements at this trial do support this view.

"An issue of fact was presented which has been decided adversely to Petitioner by the Immigration Authorities and which this Court may not review.

"2. Petitioner also claims that he did not have a fair trial before the Immigration Authorities. A careful examination of the record discloses that this is not true. He was represented by counsel, had a full hearing, and a careful examination of the record discloses that all his rights were carefully preserved.

"3. Petitioner also claims that the evidence is not sufficient to support the Warrant of Deportation, and that he, under the Law, cannot be deported upon the facts found by the Immigration Authorities. This view cannot be supported. See Lindsey v. Dobra, 62 Fed. (2d) 116.

"From what has been said, it follows that the Writ of Habeas Corpus should be denied, and Petitioner remanded to the custody of the Immigration Authorities."

court's previous order and opinion herein, to which answer copies of the warrant, the order, and the opinion were exhibited.

The petitioner did not plead further, and he did not traverse the Government's return. This failure to tra- [fol. 48] verse the return disposed of the petition, and would have disposed of it were it an original petition also, for when Bellaskus did not traverse the answer to the writ he admitted that he was held, as it stated, under a regular warrant for deportation after a fair and legal hearing. *Crawley v. Christensen*, 137 U. S. 86, 94; *Brewster v. Villa*, 90 F. (2) 853, 854; *U. S. v. O'Brien*, 111 F. (2) 232, 234.

Nevertheless, the petitioner contends that the lower court committed error in not requiring a second production before it of the record of the hearing before the immigration officials, and contends further that all the issues raised were not heard. At the hearing, the petitioner was relying on three points: (1) His counsel insisted that the issuance of the warrant was arbitrary, capricious, and constituted an abuse of discretion; (2) that the warrant having been outstanding eleven years was *functus officio;* and (3) that since there was a finding of the petitioner's birth in Turkey, there was no legal authority to deport him to Greece.

The trial court placed the burden on the petitioner to challenge the Government's answer, and refused to consider any points except (2), that the warrant had become invalid by the passage of time. That point is abandoned here by appellant. No citation of authority is necessary to uphold the *prima facie* validity of the warrant in the total absence of proof that the delay was the fault of the officials. It seems actually to have benefitted the appellant in view of the numerous delays sought and obtained by him. [fol. 49] Petitioner's point (1) disposes of itself in the absence of any factual proof, and there was no offer of proof as to how or in what manner the abuse of discretion asserted came into being, nor what acts of the officials were arbitrary and capricious, nor how there was applied an erroneous construction of law.

The final point (3), that there was no authority to deport to Greece because of the finding of birth in Turkey, is one not open to judicial inquiry in the absence of a showing that the administrative agency having the legal responsibility

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of finding the facts has illegally done so. No suggestion has been made that the findings were illegally made. Under Section 156 of Title 8 U. S. C., the Congress recognized several factors in determining the place of destination of an alien on deportation. Birth is merely one of these factors. When the agency charged with the duty of finding the facts has done so, the place of destination among the optional places fixed by Congress is applied as a matter of law by the executive branch of the Government pursuant to the legislative command.

No reversible error appearing, the judgment is Affirmed.

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SIBLEY, Circuit Judge, Dissenting:

When an alien is deported against his will, next to the question of his ejection from the United States, the most important one to him is the place to which he shall be sent. [fol. 50] The statute fixes that place thus: "The deportation of aliens provided for in this chapter shall, at the option of the Attorney General, be to the country whence they came or to the port at which such aliens embarked for the United States . . . or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country and such country refuses to permit their reentry, or imposes conditions upon permitting reentry, then to the country of which such aliens are citizens or subjects, or to the country in which they resided prior to entering the country from which they entered the United States". 8 U. S. C. A. Sec. 156. The language is mandatory: "shall". The options are, 1. the country or port of departure for the United States; 2. if the country of departure disclaims the alien and blocks reentry, then the country of true citizenship; or 3. the country of last residence before entering the country of departure. It is not lawful to deport an alien to a country of which he is not now a citizen or subject and in which he has never resided and from which he did not depart to the United States. The question can be raised on habeas corpus, deserves serious consideration, and is to be answered by the political situation of the countries at the time of the hearing. *Mensevich vs. Tod, Commissioner*, 264 U. S. 134.

This question was not decided by Judge Kennerly in the habeas corpus hearing before him in 1939, and should not have been refused a hearing in the present case when raised for the first time. The strict rules of *res judicata* do not apply to habeas corpus. *Loisel vs. Salinger*, 265 U. S. 239; *Wong Doo vs. United States*, 265 U. S. 239. In- [fol. 51] deed the political situation of Turkey and Greece have changed greatly since 1909 when this alien departed for the United States, and even since 1935 when this warrant for deportation issued.

The sworn application for the writ states that in the deportation it was found as a fact that applicant was born in Turkey, that he immigrated into the United States from Turkey, and was a citizen and subject of Turkey, and alleged that he is not a citizen of Greece and has no relatives there, and has never been in Greece. The district judge did not order the writ to issue, and there was never a return to a writ to be traversed. There was only an unsworn answer to a show cause order and it made no denial of the facts just stated. The judge refused to have the deportation record produced, or to consider any question but whether by lapse of time the deportation warrant was stale. In this I think he erred. He was right in holding the order not stale, and in his discretion he could refuse to reexamine the questions decided by Judge Kennerly; but he should have enquired whether there was any lawful reason for sending Bellaskus to Greece where he was not born, is not a citizen or subject, and has never been. It is common knowledge that Greece is now in great want and turmoil, and is not a desirable place for an alien stranger to go.

[fol. 52] JUDGMENT

Extract from the Minutes of December 2, 1947

No. 11786

ALEXANDESUS BELLASKUS

versus

L. D. CROSSMAN, Officer in Charge, United States Immigration and Naturalization Service

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Texas, and was argued by counsel:

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

"Sibley, Circuit Judge, dissents."

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[fol. 53] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 54] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 15, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter Petitioner pro se. File No. 52,761. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 10. Alexandesus Bellaskus, Petitioner, vs. L. D. Crossman, Officer in Charge, United States Immigration and Naturalization Service. Petition for writ of certiorari and exhibit thereto. Filed January 16, 1948. Term No. 10, O. T. 1948.

(8205)